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plaintiff was alive at the testator's death and was the oldest grandson alive at the death of the first grandson to take. *Held*, that the plaintiff is entitled to the portraits. *Wentworth v. Wentworth*, 92 Atl. 733 (N. H.).

The court seems right in treating the plaintiff's interest as contingent. The gift is not one of a succession of life estates to named descendants, but rather a bequest to him who shall fulfill a certain description at a given moment, and until that moment arrives the person is unascertainable. At common law, therefore, limitations to grandsons other than the first one to take would be too remote, since the estates would not necessarily vest within the period of lives in being and twenty-one years. The court admits this, but says that the New Hampshire rule is to carry out the testator's intent as far as possible and hold the gifts good for the lives in being at the testator's death and twenty-one years thereafter. In an earlier case the same court changed a contingent gift to unborn grandchildren at forty into a gift to them at twenty-one and thus sustained the devise. *Edgerly v. Barker*, 66 N. H. 434, 31 Atl. 900. Professor Gray's criticism of that case makes further censure unnecessary. See 9 HARV. L. REV. 242; GRAY, RULE AGAINST PERPETUITIES, §§ 857-893. The principal case seems to adopt a still more pernicious rule, for while the interest might not have vested until after the prescribed period, the court holds it not too remote simply because it did in fact vest within a proper time.

TAXATION — COLLECTION AND ENFORCEMENT — EQUITY JURISDICTION. — The plaintiff, an unpaid holder of bonds of the defendant county, obtained judgment but not satisfaction in a United States District Court. A number of writs of mandamus issued commanding the proper county officers to raise a tax. These officials, however, either evaded service, or "wilfully and defiantly refused to obey," with the result that "the plaintiff is utterly remediless at law by mandamus or otherwise." The plaintiff thereupon asked that a commissioner, or receiver, or other officer, be appointed in equity to levy, collect, and pay over the tax. Missouri statutes in force at the time of the bond issue provided that in addition to regular taxes "no other tax for any purpose shall be assessed, levied, or collected" except by order of the circuit court of the county according to a prescribed procedure. MO. R. S., 1909, §§ 11416-7. *Held*, that the relief asked will not be given. *Yost v. Dallas County*, 35 Sup. Ct. 235.

A discussion of the jurisdiction of the courts to compel the exercise of the taxing power will be found in this issue of the REVIEW, p. 617.

TELEGRAPH AND TELEPHONE COMPANIES — LIABILITY TO ADDRESSEE — DISCLOSURE OF MESSAGE: ILLEGAL TRANSACTIONS OF ADDRESSEE AS DEFENSE. — Two telegrams containing no imputation of immorality on their face were shown by the telegraph company's agent to friends of the addressee. One of the messages was also delivered unsealed to his mother, who read it. As a result of these disclosures it became known that the sender was a prostitute and that the addressee was her paramour. His consequent disrepute resulted in the loss of his position and other serious damages. He now sues the telegraph company. *Held*, that since the action is based on the addressee's own immoral transactions, it will be dismissed. *Western Union Tel. Co. v. McLurin*, 66 So. 789 (Miss.).

The addressee of a telegram has a right of action against the telegraph company for negligence in regard to the transmission of the message. *Western Union Tel. Co. v. Allen*, 66 Miss. 549, 6 So. 461; *Herron v. Western Union Tel. Co.*, 90 Ia. 129, 57 N. W. 696; *Contra, Playford v. United Kingdom Electric Tel. Co.*, L. R. 4 Q. B. 706. An addressee may also recover damages for the disclosure of the message. *Cock v. Western Union Tel. Co.*, 84 Miss. 380, 36 So. 392. See *Barnes v. Postal Telegraph-Cable Co.*, 61 N. C. 150, 154. In either case his

claim is properly in tort for the breach of the duty which a telegraph company, as a public servant, owes to its patrons. *Hellams v. Western Union Tel. Co.*, 70 S. C. 83, 49 S. E. 12; *Western Union Tel. Co. v. Dubois*, 128 Ill. 248, 21 N. E. 4. Accordingly, his concurring illegality, on ordinary principles of the law of torts, will be no bar to his recovery, unless it contributed as a proximate cause to the injury. *Newcomb v. Boston Protective Department*, 146 Mass. 596, 16 N. E. 555; *Gross v. Miller*, 93 Ia. 72, 61 N. W. 385. But if the only right interfered with is the right to security in some illegal transaction, the plaintiff will be denied recovery. *Stockdale v. Onwhyn*, 5 B. & C. 173; *Fivaz v. Nicholls*, 2 C. B. 501. Again, the plaintiff will not be allowed to recover for the violation by the defendant of the duties of a relationship, if those duties exist only in connection with an illicit undertaking. *Turner v. North Carolina Ry. Co.*, 63 N. C. 522; *Levy v. Kansas City*, 168 Fed. 524. But *cf. Western Union Tel. Co. v. Ferguson*, 57 Ind. 495. Analogously, since in the principal case the duty of secrecy owed by the telegraph company to the plaintiff as addressee of the telegram was violated only in regard to the plaintiff's illegal transactions, he is rightly denied recovery. In so far as the message was false, his redress is in libel; in so far as it was true, no recovery should be granted. This conclusion is supported by the fact that had the defendant contracted not to disclose the plaintiff's immoral transactions, the contract could not have been enforced. *Hatch v. Mutual Life Ins. Co.*, 120 Mass. 550. See also *Aycock v. Braun*, 66 Tex. 201, 18 S. W. 500.

**VENDOR AND PURCHASER — REMEDIES OF VENDOR — RIGHT TO SUE FOR DEFICIENCY AFTER STRICT FORECLOSURE.** — The purchaser in a contract for the sale of land paid only a part of the first instalment, and failed entirely to pay the second. The vendor then commenced this action for the overdue instalments, but while it was pending obtained a final decree of strict foreclosure. *Held*, that he cannot recover. *Waite v. Stanley*, 92 Atl. 633 (Vt.).

A vendor who retains the legal title as security usually enforces his rights through foreclosure by sale. *Aycock Bros. Lumber Co. v. First National Bank of Dolhan*, 54 Fla. 604, 45 So. 501; *Walker v. Casgrain*, 101 Mich. 604, 60 N. W. 291. If the proceeds of the sale are less than the amount of the debt the vendor will then be entitled to recover the difference either by deficiency judgment or in a separate action. *Blumberg v. Birch*, 99 Cal. 416, 34 Pac. 102. See *Fayette Land Co. v. Louisville & Nashville R. Co.*, 93 Va. 274, 283, 24 S. E. 1016, 1017. Strict foreclosure, since it usually involves hardship to the vendee, should only be granted under exceptional circumstances. *Harrington v. Birdsall*, 38 Neb. 176, 56 N. W. 961; *Flanagan Estate v. Great Central Land Co.*, 45 Ore. 335, 77 Pac. 485. In view of the small part of the purchase price actually paid in the principal case, the decree of strict foreclosure was probably proper. But it seems impossible to sustain this additional action for unpaid instalments. It is true that some jurisdictions hold that strict foreclosure of a mortgage operates as a discharge of the debt only to the extent of the mortgaged property. See *Edgerton v. Young*, 43 Ill. 464, 470; *Hunt v. Stiles*, 10 N. H. 466, 469; JONES, MORTGAGES, 6 ed., § 1567. But even this theory would not permit the vendor to recover more than the deficiency remaining unsatisfied after the return of the property. The analogy, furthermore, is misleading. Recovery in the mortgage cases may be justified on the ground that the land is merely security, and that it should no more satisfy a debt of greater amount under strict foreclosure than under foreclosure by sale. But a vendor who obtains a strict foreclosure has ended the contract and should be unable thereafter to recover against the purchaser. In a few jurisdictions strict foreclosure alone is open to the vendor who has retained the legal title as security. *Todd v. Simonton*, 1 Colo. 54; *Button v. Schroyer*, 5 Wis. 598. But even in such jurisdictions recovery of the deficiency should not be allowed, for any resulting